आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा ,अहमदाबाद- 380009		OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No.STC/15-45/OA/2017

आदेश की तारीख़/Date of Order: - 28.03.2018

जारी करने की तारीख़/Date of Issue :- 28.03.2018

द्वारा पारित/Passed by:- आर. ऍम. गौतम / ***R.M.Gautam***

अपर आयुक्त / Additional *Commissioner*

मूल आदेश संख्या / Order-In-Original No. 10/ADC/2018/RMG

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरूद्ध अपील ,इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी ,अहमदाबाद 380015-को प्रारूप संख्या इ.ए-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रू .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय: -कारण बताओ सूचना/Show Cause Notice **F.No. VI/1(d)/CTA/08/Cir-VII/Piramal-SCN/2017-18 dated 20.11.2017 issued to M/s.Piramal Water Private Ltd., Block-A, 705-709, Dev Aurum, Opp. Commerce House, Anand Nagar Road, Prahalad Nagar, Ahmedabad – 380 015.**

Brief facts of the case:

During the course of audit of records of M/s. Piramal Water Pvt. Ltd., 1, Chandan Bunglows, Near Darpan Acedamy, Usmanpura, Ahmedabad-380013 (hereinafter referred to as " ***the noticee***"), for the period April, 2012 to March, 2016, it was noticed that the noticee , though holding Service Tax Registration Certificate No. AAECP7137NSD001 for providing various taxable services (viz. Franchise Service, Management Consultancy Service; Erection, Commissioning and Installation Service, Business Support Service, Works Contract Services etc. [as a Service Provider] and Manpower Recruitment, Securities Service [as service recipient] but were not discharging service tax liability on the refrain from act/tolerating an act service; thus violated the provisions of Rule 6 of CCR, 2004 by wrongly availing Cenvat Credit on common input services used in providing taxable services and providing exempted services i.e. trading of goods & manufacture of exempted goods and were also found availing and utilizing excess Cenvat credit.

2. Based on above observation by the Audit , Draft Audit Report dated 02.11.2017, raising following Revenue Para Nos. 5, 6 & 7 was issued .

2.1 Revenue Para No 5: *Non-payment of service tax on refrain from act or tolerating an act :-* Audit noticed that the noticee had not discharged Service Tax liability on recovery made from its franchises by way of imposing penalty/due diligence fees. The said penalty /fee were being charged by the noticee from their franchises for rejection of their supply. It appeared that the income earned by the noticee by way of recovery made from its franchisees by way of imposing penalty, due diligence fees for rejection of their supplies, constitutes a declared services under the category ***"Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act"*** under clause (e) of Section 66E (e) of the Finance Act, 1994 and therefore the consideration earned by the noticee is liable to service tax.

Year	*Income Received*	*Amount on which S.Tax Paid*	*Diff. Income on which S. Tax is to be Paid* ₹	*S.Tax Payable* ₹	*Interest and Penalty*
2012-13	*190770*	*0*	*190770*	*23579*	
2013-14	*54162*	*0*	*54162*	*6694*	
2014-15	*6450*	*0*	*6450*	*797*	
2015-16	*22000*	*0*	*22000*	*3080*	As applicable
Total	*273382*	*0*	*273382*	**34151**	

2.2 Revenue Para No 6: *Wrong availment of Cenvat Credit on common input services*

goods. Further, the noticee vide e-mail dated 19.09.2017 submitted compliance of the Para No. 6 along with copy of revised ST-3 return for the period April-2017 to June-2017. However, it is observed that the said noticee had opted not to maintain separate records for receipt and utilization of inputs/ input services used in the provision of taxable services as well as exempted service & manufacture of exempted goods, as contemplated in Rule 6(2) of the Cenvat Credit Rules, 2004. It further appeared that they also failed to follow the provisions of sub-rule 3A of Rule 6 of the Cenvat Credit Rules, 2004, in as much as they failed to file the intimation letter to the Jurisdictional Range Superintendent and also failed to reverse the CENVAT credit on provisional basis for every month as per the provisions of the sub-rule 3(A) (b) supra. Therefore, the noticee is liable to pay an amount equal to 6% or 7% of value of exempted goods and exempted services, in terms of provisions of Rule 6(3)(i) of the Cenvat Credit Rules, 2004. Therefore, an amount of Rs.50,06,824/- is required to be recovered from the noticee under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 73(1) of the Finance Act, 1994 along with interest, under Section 75 of the Finance Act, 1994.

2.3 **Revenue Para-7:** *Excess Availment & utilization of Cenvat Credit:* On verification of ST-3 returns, it is observed that during the Financial Year 2013-14, the noticee had carried forward excess Cenvat credit as opening balance during the month of April, 2013 whereas the closing balance showed Rs.1,65,219/-as basic duty and Rs.4956/- as Educ. cess in their Cenvat account for the month of March, 2013. In their ST-3 return they carried forward Rs.5,05,817/- as basic duty and Rs.15174/- as Educ. cess as opening balance in their Cenvat account for the month of April, 2013. Thus the noticee availed and utilized excess credit to the tune of Rs.3,50,816/-, detailed below:

	S.TAX ₹	EDUC. CESS ₹	SHEC ₹	TOTAL ₹
CLOSING BALANCE OF CENVAT CREDIT AS ON MARCH, 2013	165219	3304	1652	**170175**
OPENING CLOSING BALANCE OF CENVAT CREDIT AS ON APRIL, 2013	505817	10116	5058	**520991**
EXCESS CENVAT CREDIT TAKEN	**340598**	**6812**	**3406**	**350816**

3. M/s. Piramal Water Pvt. Ltd. 1, Chandan Bunglows, Near Darpan Academy, Usmanpura, Ahmedabd-380013 were therefore called upon to show cause to the ***Additional / Joint Commissioner, Central GST, Commissionerate-Ahmedabad [North]*** having his office at 1st Floor, Custom House, Near All India Radio, Navrangpura, Ahmedabad as to why:-

Audit Report. Thus, the action of the department is not as per the CBEC's Audit Manual.

- The show cause notice has been issued on 20.11.2017 which is beyond the powers of the Ld. Issuing authority. Further, as per section 73(1) of the Finance Act, 1994, the show cause notice is required to be issued by the Central Excise officer.
- The notice covering period of five years is to be issued only when there is a fraud, collusion, suppression of facts, willful misstatements with intent to evade payment of service tax. If the assessee is not guilty of suppression of facts, collusion, willful misstatement of facts etc. extended period of limitation cannot be invoked- CC v. MMK Jewellers (2008) 225 ELT 3 SC). The details provided to the department is clearly disclosed in their audited books of accounts, and such audited books of accounts are open for scrutiny by any person because such audited books of accounts are submitted before the ROC and other Govt. agencies also; and even the Range, Divisional and Audit officers of Central Excise and Service Tax Department also have access to such audited books of accounts. The Appellate Tribunal in the cases like Hindalco Industries 2003 (161) ELT 346, Kirloskar oil Engines Ltd- V/s CCE Nasik reported in 2004 (178) ELT 998 and Martin & Hariss Laboratories Ltd v/s Commissioner reported in 2005 (185) ELT 421 held that balance-sheet being a public document, any demand raised on the basis of information appearing in the balance-sheet offer invoking extended period of limitation was illegal because the allegation of suppression of facts cannot be made when some information was appearing in a public document like the balance-sheet of the assessee. Even in cases where certain information was not disclosed as the assessee was under a *bona fide* impression that it was not duty bound to disclose such information, it would not be a case of suppression of facts as held by the Hon'ble Supreme court in the landmark cases at Padmini products and Chemphar Drugs & Liniments reported in 1989(43) ELT 195 (SC) and 1989 (40) ELT 276(SC) respectively; 2007 (216) ELT 177 (SC), 2002 (146) ELT 481 (SC) However, mere failure in giving correct information would not be a case where the Revenue can invoke extended period of limitation. In the present case, all the details were available with the department. Thus, in the present case, invocation of extended period is not called for. They place reliance on case law of Reliance Life Insurance Co Ltd v. Commissioner of Service Tax (2017) 10 TMI 400 (Mum – Tri).
- Rule 6(3) of the Cenvat Credit Rules, 2004 uses the word manufacturer or provider of output services opting not to maintain separate accounts. Thus

- CST v, AmolaHodings(2009) 22 STT 161=29 VST54 (CESTAT);
- Sanson Chemicals Works v. CCE (2009) 236 ELT 283 (CESTAT SMB).
- Surya Roshni Ltd. v. CCE 2004 (163) ELT 270 (CESTAT),
- In Greaves Ltd v. CCE (2007) 211 ELT 563 (CESTAT),

- From 17.03.2012, the interest under Section 14 is required to be paid only when the credit it taken and utilized wrongly. Interest is not required to be paid when the Cenvat credit has been availed but not utilized. The interest is not required to be paid for the reason that the assessee all times had the balance available with them of the Cenvat credit.
- Penalty under section 76 & 78 are mutually exclusive and can be imposed only when the extended period is invokable. There are no findings during investigation that the cenvat credit was intentionally availed with *mala fide* intention. They were under the *bona fide* belief that the activities not being exempted as most of the product they get ready are on job work basis hence the credit is eligible. Since the amount was already reversed before issuance of SCN, penalty is not imposable.
- On the issue of excess availment and utilization Cenvat credit, they contended that certain Cenvat credit has not been taken into account and that an amount of Rs.8,14,932/- has already been paid by them. Copy of challan enclosed. Extended period cannot be invoked as the facts were fully in knowledge of the department. Further as the amount has already been paid question of interest and penalty does not arise.
- Regarding the demand of Rs.34,151/- under 'Refrain from an act or tolerating an act' they contended that the value of Rs.2,73,382/- on which the said demand was arrived, is treated as expenditure then there is no reverse charge on the activity of tolerating an act as inferred from Notif.No.30/2002-ST. As per the reconciliation of book of account and service tax every year the assessee has paid more tax. Rs.2,30,726/- was paid for the period 2012-13 to 2015-16 and the amount of Rs.34,151/- can be adjusted from Rs.2,73,382/- they placed reliance on Seimens Ltd Vs CCE Cus S.Tax (2017) 12TMI 30 (A'bad –Tri).
- They also requested for personal hearing.

5. Accordingly personal hearing was granted on 26.2.2018. Shri Rohan Thakkar, C.A. appeared for hearing and represented the case on behalf of the assessee. He reiterated the submissions made vide letter dated 24.12.2017. He also submitted a case law reported in 2016(8) TMI 436-CESTAT New Delhi in the case of M/s. Mahindra & Mahindra Ltd V CCE-Jaipur-I, wherein he claims that the issue has been settled.

manner as may be prescribed. Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act, being a declared service and since not included in the negative list, is leviable to service tax.

7.3 I have also gone through Notif.No.30/2012-ST dated 20.6.2012 which notifies the taxable service and the extent of service tax payable by the person liable to pay tax. I could not find reference of the above service in the said notification nor has the noticee clearly mentioned under which notified service they claim that the reverse charge is not applicable to them. Further, I also do not find merit in the argument that they have already paid excess tax of Rs.2,30,726/- during 2012-13 to 2015-16 which needs to be adjusted against their aforesaid demand. As no documentary proof has been provided, I cannot extend any benefit to the notice hence I find that the demand of Rs.34,151/- is sustainable and is required to be recovered along with interest.

8. **Issue-2:** **Wrong availment of Cenvat Credit on common input services used in providing taxable services and providing exempted services viz. Trading of goods and manufacturing of exempted goods.** The notice alleges that the noticee has used common services for providing taxable services as well as trading activities which is exempted service and also for manufacture and clearance of exempted goods. The noticee has opted not to maintain separate records for receipt & utilization of inputs/input services used in the provision of taxable services and exempted service and exempted goods but failed to follow the provisions of sub-rule 3A of Rule 6 of the CCR, 2004 by not filing an intimation with the jurisdictional Range Superintendent and also failing to reverse the CENVAT credit on provisional basis every month as per Rule 6(A)(b) supra. Thus in terms of Rule 6(1) they are required to pay an amount of 6% or 7% under Rule 6(3)(i) of CCR, 2004 which was worked out to **Rs.50,06,824/-.** The noticee on the other hand has strongly contested the above allegation stating that they have already reversed the credit exclusively utilized in manufacturing of exempted goods and the proportionate credit attributable to exempted services and the same was also reflected in their revised ST-3 Return. They also submitted a C.A. certificate showing the credit attributable to manufacture of exempted goods/ provisions of exempted services. They also contended that though they availed the credit ,they never utilized the same thus in terms of Cir.No.858/16/2007-CX dated 8.11.2007 it would amount to credit not having been taken. They also argued that they cannot be forced to maintain separate records.

where a manufacturer or output service provider avails the Cenvat credit in respect of inputs or input services used in the manufacture of final products or provides output service which are chargeable to duty or tax as well as exempted goods or exempted services, then he shall maintain separate accounts for receipts, consumption and inventory of inputs and input services used therein and shall take Cenvat credit only on inputs under sub-clauses (ii) & (iv) and sub-clause (ii) & (iv) of clause (b). In case the manufacturer or output service provider opts not to maintain separate records, he shall pay an amount equal to 5% of the value of exempted service and goods or pay an amount determined under sub-rule (3A) or maintain separate accounts for the receipt, consumption & inventory of inputs & take credit only on inputs used in manufacture of dutiable final products excluding exempted goods and for the provision of output services excluding exempted services and pay an amount as determined under sub-rule (3A) in respect of input service. The provision of sub-clause (i) & (ii) of clause (b) and sub-clause (i) & (ii) of clause (c) of sub-rule (3A) shall not apply for such payment.

8.3 In the instant case, the noticee is engaged in providing taxable services, manufacture & sale of exempted goods viz. water purification equipment as well as trading activities and availed the Cenvat credit of Service Tax paid on various common services and utilized the same for discharging their service tax liability. These common services were used for providing taxable services as well as trading activities which is an exempted service and also for manufacture and clearances of exempted goods. Since they have opted not to maintain separate records they were required to follow (any one) of the procedure prescribed in Rule 6(3) of the CCR, 2004. Either they should pay 6% of the value of exempted goods & exempted services **or** pay an amount determined under sub-rule (3A) **or** maintain separate accounts for the receipt, consumption & inventory of inputs & take credit only on inputs used in manufacture of dutiable final products excluding exempted goods and for the provision of output services excluding exempted services and pay an amount as determined under sub-rule (3A) in respect of input service. The provision of sub-clause (i) & (ii) of clause (b) and sub-clause (i) & (ii) of clause (c) of sub-rule (3A) shall not apply for such payment.

8.4 In the instant case, I find that the noticee has not maintained separate accounts for the receipt, consumption & inventory of input services hence option (iii) of Rule 6(3) is ruled out. Thus the other two options available with the noticee is either to pay an amount equal to 6% of the value of exempted goods & services or pay an amount as determined under sub-rule (3A). Sub-rule 3(A) clearly stipulates that the while exercising this option the manufacturer or service provider shall intimate in writing to

to be paid in terms provided under sub-rule (3A) of Rule 6, the appellant have discharged the interest liability on such delay. Further while exercising this option the appellant vide their letter along with enclosed details, furnished more or less all these particulars to the Jurisdictional Superintendent. The appellant has been filing their returns regularly on monthly basis to the department. On perusal of the copies of the such return submitted along with appeal papers, it is observed that the particulars, as required under clause (a) of sub-rule (3A) of Rule 6 has been produced to the range superintendent. Therefore all the particulars which are required to be intimated to the Jurisdictional superintendent while exercising option stand produced. Though these particulars have not been submitted specifically under a particular letter, but since these particulars otherwise by way of return and some of the information under their letters has admittedly been submitted, Tribunal was of the view, as regard this compliance of Rule 6(3A), it stood made. When the appellant have categorically by way of their intimation opted for option provided under sub-rule (3)(ii), Revenue cannot insist that option (3)(i) under Rule 6 should be followed by the assessee.

9.1 I find that the above case law is not squarely applicable to the instant case as the facts are distinguishable. In the instant case the noticee had reversed Rs.30,11,403/- on being pointed out by Audit and subsequently filed a revised ST-3 return for the period April,2017 to June 2017 on 11.09.2017. Neither did they file an intimation to the Range Superintendent nor did they pay an amount as per the formula provided under sub-rule (3A) on monthly basis on their own. Since the noticee had not intimated their option to the department and in the event of failure to maintain separate accounts of receipt, consumption and inventory of inputs/inputs services they have no other option but to pay an amount equal to 6% of value of exempted goods and service.

10. Another argument put forth by the notice is that the credit was availed but never utilized and the same is reflected in the books of accounts but in support of said argument, no documentary evidence was produced to justify their above claim, hence I find that the demand of Rs.50,06,824/- is sustainable on all above grounds and is required to be recovered along with interest under Rule 14 of the CCR, 2004 and provision of Section 73(1) of the F.A., 1994.

11. **Issue 3-** ***Excess Availment & utilization of Cenvat Credit:*** On verification of ST-3 returns, it is observed that during the Financial Year 2013-14, the noticee had carried forward as opening balance an amount of Rs.5,05,817/- as basic duty and Rs.15,174/- as Educ. cess in their Cenvat account for the month of April, 2013 whereas

13. Penalty under Section 76 & 78: Penalty under Section 76 is proposed on the ground that the noticee has contravened Section 68(1) of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994. I find that in the instant case the period covered is 2012-13 to 2015-16 and during this period the issue stands settled that if penalty has been imposed under Section 78 of the Act, then no penalty is justified under Section 76 of the Act. By Finance Act, 2008 (18 of 2008) which came into force from 10-5-2008, the Parliament has made the legal position clear by introducing a proviso to Section 78. It reads as under:

"provided also that if the penalty is payable under this section, the provision of Section 76 shall not be attracted."

13.1 Relevant provisions of Section 76 & 78 are reproduced below:-

Section 76 – Penalty for failure to or pay service tax

Any person, liable to pay service tax in accordance with the provisions of section 68 or the rules made under this Chapter, who fails to pay such tax, shall pay a penalty which shall not be less than one hundred rupees for every day during which such failure continues or at the rate of one per cent of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax Provided that the total amount of the penalty payable in terms of this section shall not exceed fifty per cent of the service tax payable.

Section 78 – Penalty for suppressing, etc., of value of taxable services

(1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of—

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person, liable to pay such service tax or erroneous refund, as determined under sub-section (2) of section 73, shall also be liable to pay a penalty, in addition to such service tax and interest thereon, if any, payable by him, which shall be equal to the amount of service tax so not levied or paid or short-levied or short-paid or erroneously refunded:

.....

Provided further that if the penalty is payable under this section, the provisions of section 76 shall not apply.

13.2 The above proviso has been inserted vide Finance Act, 2008, which clearly suggests that section 76 and section 78 penalty cannot be imposed simultaneously. I place reliance on the judgment passed by hon'ble High Court in the case of *CCE v. First Flight courier Ltd. (2011) 22 STR 622 (P & H)* holding that penalty under Section 76 is not justified if penalty under Section 78 is imposed. Section 76 provides for penalty for failure to pay the amount while Section 78 provides for penalty for suppressing the taxable value. Section 78 is, thus, more comprehensive and provides for higher amount. Even if technically, the scope of Sections 76 and 78 is different, penal

manufacture & clearance of exempted goods. They also availed and utilized excess credit which was revealed during audit. Rule 15(3) of the CCR, 2004, stipulates that where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of these rules or of the Finance Act or of the rules made there under with intent to evade payment of service tax, then, the provider of output service shall also be liable to pay [penalty in terms of the provisions of sub-section (1) of section 78] of the Finance Act. Thus I find that charge of suppression is justified as discussed above. It cannot be said that it was a new levy and a person providing such services was unaware of his service tax liability. It is, thus, clear that omission did not occur due to any misunderstanding of law or ignorance of law but non-payment of service tax was with intent of tax evasion. The present show cause notice is based on the audit paras raised by the audit officers which otherwise would have gone unnoticed as the noticee had filed an incorrect ST-3 returns with the sole intention to misguide the department which was subsequently revised only when their evasion was pointed out by audit. The circumstances of the case establishes that the noticee did not discharge their statutory obligations deliberately and contravened the provisions of Section 67, 68 & 70 of the Finance Act, 1994 with the intent to evade payment of service tax.

15. As it is already proved that the noticee had suppressed the facts, the consequences shall automatically follow. Hon'ble Supreme Court has settled this issue in the case of **U.O.I Vs Dharmendra Textile** Processors reported in **2008 (231) ELT 3 (S.C)** and further clarified in the case of **U.O.I Vs R S W M** reported in **2009 (238) ELT 3 (S.C).** Hon'ble Supreme Court has said that the presence of *mala fide* intention is not relevant for imposing penalty and *mens rea* is not an essential ingredient for penalty for tax delinquency which is a civil obligation. Further, Hon'ble High Court of Karnataka at Bangalore in the case of **Motor World (2012 (27) S.T.R. 225 (Kar.))** held that

> *"Section 78 applies to a case where a person has registered himself under the Act and failed to file the prescribed return and in such return filed, he has suppressed or concealed the value of taxable service or has furnished inaccurate value of such taxable service. ….*
>
> *…….Therefore, the argument that once acts of suppression, concealment and furnishing inaccurate particulars are established, the penalty follows as a matter of course or in other words is automatic, is without any substance as it runs counter to the express provision contained in Sections 78 and 80 of the Act. When once it is held that there is no reasonable cause, then he authority is empowered to impose penalty as prescribed under Section 78, for such failure. Here the penalty prescribed is penalty which shall not be less than but which shall not exceed twice the amount of Service tax sought to be evaded by reason of suppression or concealment of the value of taxable service or the furnishing of inaccurate value of such taxable service.*

b) I determine the Service Tax of **Rs.50,06,824/-** (Rupees Fifty Lac Six Thousand Eight Hundred Twenty Four Only) under Section 73(2) of the Finance Act, 1944 by invoking extended period, (Revenue Para-6).

c) I determine the Service Tax of **Rs.3,50,816/-** (Rupees Three Lac Fifty Thousand Eight Hundred Sixteen Only) under Section 73(2) of the Finance Act, 1944 by invoking extended period, (Revenue Para-7).

d) I order to pay interest on the demands at (a) to (c) under the provision of Section 75 of the Finance Act, 1994 read with Rule 14 of the CENVAT Credit Rules, 2004.

e) I do not impose any penalty under Section 76 of the Finance Act, 2004 for non-payment of service tax not paid as per (a) above in light of my findings at para 13.

f) I impose penalty of **Rs.34,151/-** (Rupees Thirty Four Thousand One Hundred Fifty One Only) upon them under Section 78 of the Finance Act, 2004 for non-payment of service tax as per [a] above with intent to evade payment of Service tax.

g) I impose penalty of **Rs.26,78,820/-** (50% of **Rs.53,57,640/-** *[Rs.50,06,824 + Rs.3,50,816])* (Rupees Twenty Six Thousand Seventy Eight Thousand Eight Hundred Twenty Only) upon them on wrongly availing and utilization of CENVAT Credit at [b] & [c] above, resulting into non-payment of service tax with an intent to evade payment of Service tax, under Section 78 of the Finance Act, 1994 read with Rule 15(3) of the CENVAT Credit Rules, 2004.

h) I do not impose penalty upon them for wrongly availing and utilizing CENVAT Credit amounts at [b] & [c] above, resulting into non-payment of service tax, under Section 76 of the Finance Act, 1994 read with Rule 15(1) of the CENVAT Credit Rules, 2004 in light of my findings at para 13.

i) I impose penalty of **Rs.10,000/** (Rupees Ten Thousand only) upon them under Section 77 of the Finance Act, 1994 for failure to show correct taxable value in their ST-3 returns.

j) The penalties imposed under (f) & (g) above stand reduced to 25% only, if the entire amount of service tax confirmed above and interest is paid along with the reduced penalty within one month of issue of this order.

28.3.18

[R. M. GAUTAM]
Additional Commissioner
C.Ex. & CGST,
Ahmedabad-North

F.No: STC/15-45/OA/2017

Date: 28.03.2018